



## **Kraft Foods**

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Country of Origin Labeling Program  
Agricultural Marketing Service  
United States Department of Agriculture  
Stop 0249; Room 2092-S  
1400 Independence Avenue, SW  
Washington, DC 20250-0249

**RE: Country of Origin Labeling Regulations under the Farm Security & Rural  
Investment Act of 2002; Docket # LS-02-13**

Dear Sir or Madam:

Kraft Foods Inc. ("Kraft") is the largest branded food and beverage company headquartered in the United States and the second largest in the world.<sup>1</sup> Kraft markets products under recognized brand names - such as *Oscar Mayer*, *Jell-O*, *Maxwell House*, *Post*, *Nabisco* and *Kraft* - that are found in almost every American home. Of particular relevance to the above-referenced matter, Kraft markets peanut and other snack nut products throughout the United States under the well-known *Planters* brand name; indeed, *Planters* is the leading brand of snack nuts in the United States. Accordingly, Kraft has a vested interest in the development and implementation of the country of origin labeling regulations required by the Farm Security and Rural Investment Act of 2002 (hereinafter the "Farm Bill" or "Statute") as they pertain to peanuts.

In its Guidelines for Interim Voluntary Country of Origin Labeling published by the Agricultural Marketing Service ("AMS") in the October 11, 2002 *Federal Register* (hereinafter the "Guidelines"), AMS has taken the position that peanuts that are shelled, roasted, salted and/or flavored (hereinafter collectively "roasted peanuts") for retail sale are *not* excluded from the country of origin labeling requirements under the Farm Bill. While Kraft appreciates the challenges AMS faced in creating the Guidelines, we object to the Agency's initial determination with respect to roasted peanuts given the clear statutory exclusion for processed food items. We further contend that the inclusion of roasted peanuts is inconsistent even with the narrow definition for processed food proposed by AMS in the Guidelines. Finally, the inappropriate imposition of the country of origin labeling regime under the Farm Bill to roasted peanuts is

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<sup>1</sup> Kraft Foods Inc. includes its two operating companies, Kraft Foods North America, Inc. and Kraft Foods International, Inc. The company's reported revenue for the year 2002 was roughly \$30 billion.

unnecessary given that these commodities are already covered by Customs country of origin labeling requirements. Hence, the Agency's proposed application of its country of origin labeling regime to roasted peanuts would add needless burden and costs to the snack nuts industry. Each of these points is addressed in turn in greater detail below.

## **I. Roasted Peanuts Fall within the Processed Food Exclusion Under the Statute**

As you know, the Statute, among other things, requires country of origin labeling for certain "covered commodities," including peanuts. However, a covered commodity is specifically excluded from the scope of the country of origin labeling provisions if "the item is an ingredient in a processed food item." In its Guidelines, AMS has taken the position that roasted peanuts should not be exempted because the majority of peanuts sold at retail are shelled, roasted and salted.<sup>2</sup>

Kraft contends that the Agency's position with respect to roasted peanuts is untenable in light of the explicit statutory exclusion for processed food items. More specifically, roasted peanuts are clearly processed foods under established regulatory definitions for "processed" and "processed foods." As support for our position, Kraft references, and otherwise fully endorses, the comments separately filed on this date by the Snack Food Association ("SFA") in connection with the proposed Guidelines. The SFA comments provide, *inter alia*, a very thorough review of the established regulatory definitions for "processed" and "processed foods," and rightfully conclude that roasted peanuts would qualify as a "processed food" under these established definitions.

Further, peanuts are combined with other ingredients in almost all roasted peanut products sold at retail. For example, three of Kraft's most popular roasted peanut products are *Planters* Cocktail Peanuts, *Planters* Dry Roasted Peanuts, and *Planters* Honey Roasted Peanuts. The respective ingredients (as indicated on the label) for these products are:

- *Planters* Cocktail Peanuts: peanuts, peanut oil, salt
- *Planters* Dry Roasted Peanuts: peanuts, salt, sugar, cornstarch, monosodium glutamate (flavor enhancer), dried yeast, gelatin, hydrolyzed soy protein, paprika, onion and garlic powders, spices, natural flavor
- *Planters* Honey Roasted Peanuts: peanuts, sugar, honey, corn syrup, salt, peanut oil, xanthan gum.

While peanuts are the predominate ingredient in each case (as consumers would expect), you can see that the finished products have anywhere from two to ten additional ingredients. Thus, peanuts, the "covered commodity," are but one ingredient in a "processed food item," i.e., the finished roasted peanut product. As such, peanuts used to produce roasted peanut products fall within the literal meaning of the processed food item exclusion in the Statute. Any interpretation to the contrary would be a misread of the statutory language.

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<sup>2</sup> Guidelines at 6. To our knowledge, the legislative history on the Farm Bill does not support the Agency's position as to Congress' intent with respect to roasted peanuts; indeed, if anything, the limited legislative history on this point supports the position that roasted peanuts should be excluded.

## **II. Roasted Peanuts Are Exempt Even Under the Agency’s Proposed Definition for a “Processed Food Item”**

In its Guidelines, AMS defines a “processed food item” in two ways:

- (1) a combination of ingredients that result in a product with an identity different from that of the covered commodity, and
- (2) a commodity that is materially changed to the point that its character is substantially different from that of the covered commodity.

Guidelines at 4. Roasted peanut products arguably fall within the first definition because, as covered above, they are made from a combination of ingredients that result in a product (*i.e.*, roasted peanuts) with an identity different from that of the covered commodity (*i.e.*, peanuts). However, AMS does not need to concern itself with any ambiguity over the application of its first definition because roasted peanuts clearly fall within the scope of the second definition.

More specifically, a raw peanut undergoes significant physical and chemical changes during the roasting process. Raw peanuts and tree nuts are plant storage tissues; they contain large amounts of liquid oil, native protein, and soluble metabolites such as sucrose and free amino acids. These materials are prone to oxidation and hydrolysis by endogenous enzymes. The chemical reactions triggered by roasting change the raw nut irreversibly and generate a characteristic roasted flavor not present in the raw kernel. Among other things, roasting denatures the nut’s storage proteins to produce flavor compounds and aroma, as well as the brown pigments associated with the Maillard reaction (a complex interaction between sugars and amino acid groups).

Proper roasting also produces the desired crisp texture of a roasted nut, while antioxidants generated by the application of high heat help preserve the freshness of the roasted product. With proper packaging, these desired roasted product attributes can be preserved for years.

In short, roasting consumes amino acids, sugars, peptides, and other components to produce the characteristic flavor, color, and physical structure of a roasted nut. None of these features exists in the raw nut. As such, roasted peanuts are “substantially different” from raw nuts, just as the second definition requires, and thereby qualify as a “processed food item.”

## **III. The Proposed Country of Origin Labeling Requirements Will Be Duplicative**

As you know, Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. § 1304; hereinafter “Section 304”) mandates country of origin labeling of “every article of foreign origin.” Section 304 exempts from labeling articles that are incapable of being marked, as well as natural products, including produce, offered for sale to the ultimate purchaser in bulk and in their natural state. 19 U.S.C. § 1304(a); 19 C.F.R. §§ 134.32. and 134.33. Accordingly, under Section 304 and its implementing regulations, peanuts sold in bulk – such as in-shell peanuts – currently are not required to bear country of origin labeling. However, other peanut products, including roasted peanuts, sold in containers are subject to Section 304 country of origin labeling requirements. At most, then, AMS should only look to apply its country of origin labeling requirements under the Farm Bill to those peanut products not already covered by Section 304, *i.e.*, in-shell peanuts.

In addition, producers of domestic roasted peanut products can already label their products as a “product of the U.S.” if they so desire, provided they comply with the applicable Federal Trade Commission (FTC) guidelines. Accordingly, the position taken by AMS in its Guidelines with respect to roasted peanuts will create unnecessary and duplicative requirements in this area.

#### **IV. The Costs Associated With Implementation And Compliance Will Be Significant**

Companies such as Kraft that manufacture and/or market roasted peanut products will incur significant costs and will have to expend substantial resources to implement and comply on an ongoing basis with the proposed country of origin labeling program under the Guidelines. Kraft is still assessing the full impact of the proposed program vis-à-vis its current practices for its roasted peanut products. However, we have already identified costs for implementation and compliance associated with labeling, product segregation, recordkeeping and customer assurance.

With regard to labeling, the Statute indicates that if a covered commodity is already individually labeled for retail sale with country of origin, the retailer is not required to provide any additional information. Hence, while not required, retailers will undoubtedly insist that suppliers indicate the country of origin on the label for the covered commodity to avoid having to provide said information separately at the point of sale. As such, the label for Kraft’s numerous *Planters* branded roasted peanut products would need to be modified to bear an appropriate marking. The cost of the initial label changes alone would be significant. However, this undoubtedly would not be a one-time cost. While the majority of roasted peanut products marketed in the U.S. typically utilize domestically grown peanuts, history has shown that domestic peanut shortages will occur periodically for a variety of reasons (*e.g.*, droughts, disease, economic factors). When these shortfalls occur, domestic manufacturers of peanut products must necessarily look to peanut imports to fulfill their requirements. Moving forward, such an event would require that companies such as Kraft update their labels to identify the country(s) of origin of the peanuts in the order in which they predominate by weight. In these instances, the additional labeling costs would be even more severe as two label changes would be needed, the first to address the initial shortfall and the second for the subsequent return to domestic peanut usage only.

In addition, in the event Kraft needed to import peanuts to meet its requirements due to a domestic shortfall, the Guidelines would require that we have in place a “verifiable segregation plan” given the presence of a covered commodity from more than one country. Guidelines at 17. Accordingly, to the extent not already in place, companies such as Kraft would need to develop the capability to segregate peanut shipments at its facilities, such as by adding additional storage facilities. We also would need to maintain records that provide clear product tracking from the port of entry into the U.S. Id. Further, because for blended products the Guidelines require country of origin information based on order of predominance, we would effectively be restricted to utilize a fixed ratio of domestic and non-domestic peanuts in our products, including potentially a fixed ratio among non-domestic peanuts if sourced from more than one country, to avoid numerous labeling changes. This would adversely impact manufacturing costs by reducing flexibility.

The Guidelines also stipulate certain recordkeeping requirements to ensure a “verifiable recordkeeping audit trail” for compliance purposes. Further, said records would need to be

maintained for at least two years. This requirement would invariably add additional records maintenance and storage costs to the existing production costs for roasted peanuts.

As previously stated, it is difficult to assess with certainty the potential cost impact of the proposed country of origin labeling program for roasted peanuts, but Kraft expects that the additional manufacturing costs also would be significant. These costs could include maintaining dual raw material and packaging material inventories at our facilities from processing through packaging, as well as extra labor to manage the additional inventories. Further costs may include potential process material write-offs due to inflexibility over commingling of products, logistical costs due to the challenges that invariably will be faced in implementing and administering the program, and potential infrastructure costs to develop additional capability to segregate materials. Accordingly, it is safe to assume that the costs for compliance will vary from year to year but nonetheless will be significant.

Finally, as the supplier of a covered commodity, Kraft would be required to provide retailers (*i.e.*, our customers) country of origin labeling information for our roasted peanut products. As covered above, we likely would be compelled by our customers to provide this information on an ongoing basis by way of our labels. However, we invariably will also receive numerous requests from our customers each year for information on our country of origin compliance program in connection with their own compliance obligations; indeed, we have already received requests from several customers regarding this issue. These costs are difficult to ascertain in advance, as we cannot predict with certainty what every customer will require.

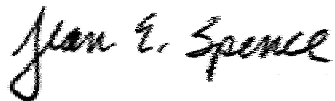
Overall, Kraft anticipates that peanut product manufacturers will incur significant costs to implement and maintain the country of origin labeling program under the Guidelines for roasted peanut products. These costs ultimately would be borne by the industry, passed along to consumers in the form of higher prices for roasted peanut products, or some combination thereof. Equally important, these costs could lead to an unintended, perverse consequence of the country of origin labeling requirements under the Farm Bill; namely, the potential for increased use of foreign peanuts by domestic roasted peanut manufacturers. Specifically, as noted above, the sporadic use of imported peanuts to fulfill domestic supply shortages will result in significant costs stemming from label changes and related product segregation measures. In an attempt to minimize these costs, domestic manufacturers of roasted peanut products may look to import some quantity of peanuts on a more consistent basis, if the opportunity is available, to insure against potential domestic shortages. While likely not ideal, this is a possibility that domestic manufacturers may feel compelled to at least explore should AMS maintain its current position in this matter.

#### **IV. Conclusion**

While Kraft appreciates the challenges AMS faced in drafting the Guidelines, we respectfully submit that the Agency has overreached in applying the country of origin labeling requirements under the Farm Bill to roasted peanuts. Accordingly, we request that AMS reconsider its current position and rightfully conclude that roasted peanuts are exempt as “processed foods” in accordance with the explicit language of the Statute.

We appreciate the opportunity to offer comments in this matter, and thank you in advance for your consideration. If Kraft can provide additional information or clarification on any points raised in this letter, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink that reads "Jean E. Spence". The signature is written in a cursive, flowing style.

Jean E. Spence  
Senior Vice President  
Worldwide Quality, Scientific Affairs and Compliance